

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KATHLEEN CHANDLER,

Plaintiff,

v.

ARIZONA PARTNERS RETAIL
INVESTMENT GROUP, LLC, an
Arizona Limited Liability
Company, Does 1 to 20,

Defendants.

CIV-S-04-2218 DFL/JFM

MEMORANDUM OF OPINION
AND ORDER

Plaintiff moves for reconsideration of the court's March 18, 2005 order granting defendant's motion to dismiss. A motion for reconsideration will not be granted, absent exceptional circumstances, unless a party provides newly discovered evidence, the court committed clear error, or there is an intervening change of law. School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

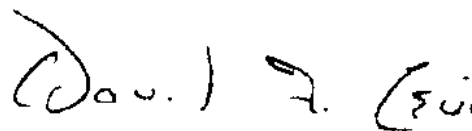
Plaintiff requests reconsideration on the basis of clear error. The request is DENIED. To date, plaintiff has failed to cite a single California Building Code section that could raise a

1 presumption of negligence in this case. Nor does the court's
2 order prevent plaintiff from suing to recover for her injuries.
3 Plaintiff's general negligence claim remains in this action and
4 is the proper vehicle through which she may present her case.
5 Finally, the court did not find that plaintiff's negligence per
6 se claim is "trumped" by the Americans with Disabilities Act;
7 this claim was dismissed because plaintiff cannot raise a
8 presumption of negligence through defendant's alleged violation
9 of disability access building codes. (3/18/2005 Order at 4.)

10 Plaintiff's motion to amend her negligence per se claim to
11 add citations to various California Building Code sections and
12 statutes is also DENIED. The proffered code sections and
13 statutes do not provide a valid basis for a negligence per se
14 claim here. Therefore, amendment would be futile. DeSoto v.
15 Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

16 Finally, plaintiff requests certification for an
17 interlocutory appeal of the court's order. This motion is also
18 DENIED. The order does not involve questions of law as to which
19 there is substantial ground for difference of opinion. 28 U.S.C.
20 § 1292(b). IT IS SO ORDERED.

21 Dated: 5/9/2005
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DAVID F. LEVI
United States District Judge